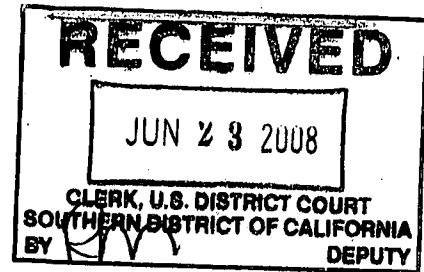


ORIGINAL

1 KEVIN O. GUNN
2 P.O. BOX 2349
3 BLYTHE, CA 92226

4 In Pro- Persona



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6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 KEVIN O. GUNN
11 In Pro-Persona Petitioner,
12 w.
13 J.E. SALAZAR, Warden
14 Respondent.

Civil No. 08-0972 LAB (WMC)
MOTION FOR APPOINTMENT OF
COUNSEL

15 To the HONORABLE LARRY ALAN BURNS, United States District
16 Judge, please take notice that under the Criminal Justice Act,
17 18 U.S.C. Section 3006(A) 1994, counsel may be appointed to
18 represent prisoners in Federal Habeas Corpus procedures. It has
19 been observed by practitioners that legal assistance at this
20 early stage is often critical to enable prisoners with little
21 knowledge of the law to recognize meritorious claims, draft the
22 petition properly, and file the necessary documents with the
23 petition.

24 Pre-filing representation may be particularly important
25 because "a prisoner applying for Federal Habeas Corpus relief in
26 federal court must assert all possible violations of his
27 constitutional rights in his initial application or run the

1 risk of losing what might be a viable claim." Brown vs. Vasquez,
 2 952 F.2d 1164, 1165 (9th Cir.) Cert denied, 503 U.S. 1011
 3 (1992)(decision's holding limited to capital cases) Furthermore,
 4 "the services of investigators and other experts may be critical
 5 in the pre-application phase of a habeas corpus proceeding,
 6 when possible claims and the factual bases are researched and
 7 identified." McFarland vs. Scott, 512 U.S. 849 (1994)(decision's
 8 holding limited to capital cases.

9 Rule 8(c) of the Habeas Rules gives district judges the
 10 discretion to order the employment of counsel under the Criminal
 11 Justice Act at any stage of the case if the interest of justice
 12 so requires.

13 Both state and federal government have recognized the
 14 importance of counsel to assist prisoners with legal challenges.
 15 The U.S. Supreme Court has held that prisoners have a consti-
 16 tutional right to "meaningful access" to the courts to challenge
 17 their convictions. Bounds vs. Smith, 430 U.S. 817, 825 (1977).
 18 The Due Process Clause of the 14th Amendment has been interpret-
 19 ed that no person will be denied the opportunity to present to
 20 the courts allegations concerning violations of "Fundamental
 21 Constitutional Rights." Wolf vs. McDonnell, 418 U.S. 539, 579
 22 (1974). Some courts have recognized that meaningful access to
 23 the courts requires the assistance of an attorney. McFarland
 24 vs. Scott, 512 U.S. 849, 855-56 (1994).

25 "Meaningful access" requires the appointment of counsel
 26 in order to investigate and research complex factual and legal
 27 claims, review the record for legal errors and draft appropriate

1 legal pleadings. See McFarland vs. Scott, Supra at 856, 858
2 ("right to [habeas corpus] counsel necessarily includes a right
3 for counsel meaningfully to research and present a defendant's
4 habeas claims")

5 By analogy, no one would contend that "meaningful access"
6 to medical care is complete when one enters the reception room
7 of the doctor's office without one-on-one consultation with the
8 doctor, nothing "meaningful" has happened. Likewise, giving an
9 untrained prisoner the opportunity to file un-researched,
10 incomplete, legally-flawed legal pleadings leaves much to be
11 desired in terms of "reasonable access" to the courts.

12 Petitioner is in custody in violation of the 5th, 6th, 8th,
13 and 14th Amendments of the United States Constitution which,
14 rendered his trial fundamentally unfair and resulted in a
15 miscarriage of justice.

16 The issues of concern in petitioner's Writ of Habeas Corpus
17 are substantial and complex procedural, legal and mixed legal
18 and factual questions as well as effective assistance of counsel.
19 Petitioner is indigent and in no position to investigate crucial
20 facts. Maclin vs. Freahe, 650 F.2d at 887, and factually complex
21 issues that involve "conflicting testimony," petitioner has
22 colorable claims but lacks the capacity to present it. Gordon
23 vs. Leeke, 574 F.2d 1147 (4th Cir.) Cert. denied. 439 U.S. 970
24 ((1978), and he has at least one strong legal claim. Hahn vs.
25 McLey, 737 F.2d 771 (8th Cir. 1984)

26 Without counsel petitioner will be effectively denied
27 "meaningful access" to the courts and his constitutional right


1 to bring a habeas corpus challenge has been suspended."

2

3 Wherefore, petitioner request that this court appoints
4 counsel to represent him.

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KEVIN O. GUNN
In Pro-Persona

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Date: 6-19-08

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